

**State Comments Received re Survey on Issues Priority  
Revised Issues List as of August 29, 2018 meeting of MTC Uniformity  
Committee Marketplace Facilitator Work Group**

Date: September 11, 2018

**IA general comments:**

Iowa ranked 10 of the 16 items it would like to consider. The top 8 issues seem the most important. These 8 issues can be distilled into two overarching questions:

1. What is a marketplace?
2. Should we just treat the marketplace as the retailer for purposes of sales tax collection?

During the 2018 legislative session, Iowa relied heavily on the work Washington put into its marketplace statute. Iowa also considered Minnesota's and Pennsylvania's statutes as well as legislation states proposed and passed during 2018 legislative sessions.

Ultimately, Iowa defined "marketplace facilitator" very broadly. Iowa also incorporated "marketplace facilitator" into its definition of "retailer." As a result, the marketplace facilitator is effectively the retailer for marketplace sales. Iowa law treats the marketplace facilitator as a retailer for all other purposes of Iowa law, with two exceptions. First, all marketplace facilitators are given a seven-year period where they are allowed to make a certain percentage of errors, as this new structure is implemented. The allowable error rate declines over time. Second, marketplaces can be relieved from liability for failing to collect because of inaccurate information provided by a marketplace seller, if the marketplace facilitator made a reasonable effort to obtain accurate information from the marketplace seller.

If marketplaces follow these laws, Iowa will not ask marketplace sellers to register for Iowa sales tax permits unless they also make non-marketplace sales into Iowa. In other words, if sellers only sell on one or more marketplaces and those marketplaces collect Iowa sales tax, Iowa will not require these marketplace sellers to register and file sales tax returns. Because the focus of collection is on the marketplace facilitator and the marketplace facilitator is the retailer under Iowa law, Iowa does not allow a small seller exception specific to

marketplace sellers. Iowa also expects that the focus of future sales tax audits would be on the marketplace, not the individual marketplace sellers.

Every issue on this list is important. Iowa has voted to set several of these important items aside for purposes of this group. For example, I think the proposal to include statutory protections against class actions and against private actions for overcollection is important. Iowa adopted statutory protections for retailers, including marketplace facilitators, from private rights of actions and class actions. Essentially, if a retailer over-collects and remits the funds to the Iowa Department of Revenue, the retailer may elect to give the customer a refund. But the exclusive legal recourse for the customer is to seek a refund from the Iowa Department of Revenue. The reason Iowa proposed to set this aside is that there are already several workable examples of statutes--including the newly enacted Iowa Code section 421.71--states could use to achieve this.

#### Issues

1. Should there be common definitions for the terms such as “marketplace,” “marketplace seller,” “marketplace facilitator,” “referral,” and “referrer,” or equivalent terms?

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_ No\_\_\_

CT: For states that have not enacted legislation. However this could be an issue for states that have already enacted marketplace legislation and are currently or in the near future enforcing the statute.

GA: I don’t think we need to define “referral” or “referrer”.

2. If a state establishes an economic nexus threshold for requiring collection of sales/use tax, does it clearly indicate when that threshold is met, triggering a registration obligation, with respect to a marketplace seller, marketplace facilitator, or referrer? Should states consider a sales volume economic nexus threshold, without an alternative separate number of transactions threshold, or include both sales volume and separate number of transactions in the threshold?

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_ No\_\_\_

CT: There would be a question when a marketplace sellers sells both through a facilitator and their own forum. What sales are included for the marketplace seller to meet economic nexus thresholds? Would both sales through the facilitator and their own forum cumulatively be counted for threshold requirements? Or just sales through their own forum. Sales volume should be the only measure of economic presence. It would eliminate the issue when a remote sellers meets the sales volume threshold but does not meet the transaction level. One measure for threshold requirments.

GA: It would be much easier for sellers and facilitators if the details of how the threshold applies are the same. For example, if the sales volume is reached either in the prior calendar year, collect in the current year; if not reached in the prior calendar year, then if reached in the current year, the collection obligation begins the first of the next month that is at least 45 days from the date the threshold was reached.

PA: Notice/Reporting obligation may preclude the necessity to consider economic nexus threshold (*DMA v. Brohl*) by states who have this election.

3. Are registration and return filing requirements in conflict or duplicative?  
If the marketplace facilitator is required to register, collect and remit the sales/use tax on facilitated sales, then is there a need for the marketplace seller to register or report those same sales?  
Priority ranking: \_\_\_\_  
Should this issue be considered by the Work Group? Yes\_\_\_ No\_\_\_

CT: The small seller should only be required to register if the meet threshold requirements on sales from their own forum. The Marketplace Facilitator reports sales from their forum. This would avoid duplication of registration an filing. If a seller is already registered, they should only report their own forum's sales.

PA: The point of the Marketplace approach is to minimize these functions (registration and return filing/payment). We consider them duplicative for that reason.

4. Should the person registering, collecting, remitting tax and filing returns be the person that the state should audit and require compliance with the state's record keeping requirements?

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

**CT:** Yes - Should be included in proposed legislation.

5. Should states imposing a sales volume-based economic nexus threshold for sales/use tax collection also consider adopting an economic—or factor presence--nexus threshold for income tax?

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

**GA:** While this question is important, in view of the limited time and the fact that it is not a sales tax issue, it should not be part of this particular effort.

6. Should states strive to simplify the registration process and require the minimum information necessary from the marketplace seller or facilitator?

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

**CT:** Possibly develop a registration process through MTC were a seller/facilitator can register for multiple states at one time. MTC would then provide this information to the applicable states.

**GA:** It would be very beneficial to taxpayers if they could register with multiple states at once, but I don't think this an issue that needs guidance to be developed – states would have a natural incentive to participate in a central registration point.

7. States should provide liability protection to marketplace facilitators when errors in collection and remittance are due to marketplace seller providing erroneous information to the marketplace facilitator?

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

**CT: Yes - Should be included in proposed legislation.**

8. Should states include statutory provisions concerning protection of collecting marketplace facilitators against the risk of class action lawsuits?

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_ No\_\_\_

**CT: Class action lawsuit by small remote sellers that do not meet economic nexus thresholds? Don't know how you could stop a lawsuit.**

Additional Issues Suggested:

9. How should remote sellers/facilitators handle sales to exempt persons/entities? For instance, for tribal members purchasing products in their Indian country, those sales are exempt in WA, but how should sellers/facilitators handle those transactions? (Washington)

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_ No\_\_\_

**CT: There should be uniform exemption certificate(s) accepted and approved by every state. This would ease the burden both on facilitators required to collect and remit taxes on all transactions and marketplace sellers (remote sellers ) that on their own merits are require to register and collect taxes.**

**PA: Facilitators will need to determine taxability directly or working with their Marketplace sellers.**

10. Should states clarify the extent that physical presence is still a relevant inquiry in determining substantial nexus? (Washington)

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_ No\_\_\_

**CT: Physical presences requires registration as long as the presence is not minimal. Still most relevant nexus trigger.**

**PA: Physical presence nexus should be handled by each state administratively according to existing policies and rules.**

11. How should states handle foreign sellers' sales through the marketplace facilitator? (Washington)

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

**CT:** Foreign sales should be handled similar to domestic sales on the facilitators forum.

12. Clarification is needed as to whether marketplace sellers in the Amazon FBA Program with inventory in a state are protected under P.L. 86-272 vs. having physical presence or economic nexus. (Paul Rafelson)

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

**PA:** Focus of this Marketplace discussion should be on sales tax; recommend precluding the income tax discussion. Physical presence nexus such as inventory in a state should be treated by each state according to its current rules/procedures.

**GA:** With the limited time in which to develop guidance, I think it would be difficult to include income tax issues on the agenda.

13. As a sub-issue to Issue No. 1, should a “carve out” provision be developed in the definition of “marketplace facilitator” to exclude local online delivery services (such as local area restaurant food delivery businesses)? (Alabama)

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

**CT:** Do states want within the definition of a marketplace facilitator to include lease and rentals (OTC), meals and room occupancy (OTC)? States should already be receiving the taxes on these transactions since the car rental retailers, restaurants and hotels are already registered and remitting the tax. States are only missing out on the tax that would be imposed on the facilitators fee to the customer. Was this the intent of the marketplace facilitator?

14. Should the definitions for “retailer” and “retail sale” be revised to clarify whether a marketplace seller vs. a marketplace facilitator is considered to be the “retailer” making a “retail sale”? (Paul Rafelson)

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

CT: Yes - Legislation enacted should enumerate who is the retail to the transactions.

PA: No. The definitions for “retailer” and “retail sale” should not be revised. The key is focusing on collection by a Marketplace facilitator going forward, not clarifying who was the retailer looking backwards.

15. Should states develop payment plan options for marketplace sellers with physical presence nexus that have past sales/use tax liabilities to resolve? (Scott Letourneau)

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

CT: If a marketplace sellers has physical presence, they were required to be registered and a state’s normal process for establishing a deficiency assessment and collection should be followed.

However what will be the strategy for marketplace facilitators that do not register and collect on effective dates of registration? How will legislation be enforced?

GA: I think this is a policy issue for each state to consider; many states have participated in the MTC VDA efforts for online sellers, and most if not all states already have VDA programs with standards for participation, and also have installment payment agreement options for taxpayers. I think there are already good programs in place for such taxpayers and no need to treat online sellers that had physical presence differently from other sellers that had physical presence in a state and are already on installment payment agreements under an existing state program.

PA: Administrative concern should be addressed by each state and not part of this Marketplace focus.

16. Should states consider including marketplace facilitator provisions in the administrative statutes for other types of excise taxes that involve marketplace facilitators, such as lodging, utilities, transportation services, etc.? (Diane Yetter)

Priority ranking: \_\_\_\_\_

Should this issue be considered by the Work Group? Yes\_\_\_\_ No\_\_\_\_

PA: A general approach for other 'digital platforms' should be discussed but at another forum at another time and place. This important topic should not interfere with focus on Marketplace for online retail sales.

GA: With the limited time in which to develop guidance, I think it would be difficult to include other tax types on the agenda.